

SIKKIM



GOVERNMENT

GAZETTE

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Gangtok

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No. 325

**GOVERNMENT OF SIKKIM
HOME DEPARTMENT
GANGTOK**

No. 79/Home/2021

Dated: 08/11/2021

NOTIFICATION

Whereas, the Hon'ble Supreme Court in its Judgment dated November 22, 2013 passed in Criminal Appeal No. 1838 of 2013, CBI vs. Ashok Kumar Aggarwal has observed that there is an obligation on the sanctioning authority to discharge its duty to give or withhold sanction only after having full knowledge of the material facts of the case. Grant of sanction is not a mere formality. Hon'ble Supreme Court vide said Judgment has explicitly laid down guidelines for grant of sanction for prosecution which needs to be complied upon.

And whereas, the State Government felt it expedient and necessary to prescribe the procedure for obtaining sanction for prosecution against the public servant of the State Government and Public Sector Undertaking and Local Authority under the relevant provision of Prevention of Corruption Act, 1988 and Code of Criminal Procedure, 1973;

Now, therefore, the following guidelines are hereby issued to be kept in view while dealing with cases of sanction of prosecution:-

- (i) In cases investigated by the Sikkim Police or the Sikkim Vigilance Police against any public servant who is not ordinarily removable from his office except with the sanction of the Governor, the prosecuting agency, namely the Sikkim Police or the Sikkim Vigilance Police as the case may be shall forward its draft report of investigation to the Home Department in case of officers of group 'A' and 'B' for seeking grant of sanction by the sanctioning authority.
- (ii) In cases investigated by the Sikkim Police or the Sikkim Vigilance Police against any public servant who is not ordinarily removable from his office except with the sanction of the Governor, the prosecuting agency, namely the Sikkim Police or the Sikkim Vigilance Police as the case may be shall forward its draft report of investigation to the concerned Department under whom they are posted in case of officers of group 'C' and 'D' for seeking their views and comments. Thereafter, the concerned department shall send the file to the Home Department for seeking grant of sanction by the sanctioning authority.

- (iii) In case of the Officers belonging to the of Group 'A' & 'B' of the State Government or Public Sector Undertaking and Local Authority the Hon'ble Chief Minister shall be the competent authority to grant sanction prosecution for prosecution or to withhold sanction for prosecution.
- (iv) In case of officers belonging to the Group 'C' & 'D' of the State Government or Public Sector Undertaking and Local Authority the Chief Secretary to the Government of Sikkim shall be the competent authority to grant sanction for prosecution or to withhold sanction for prosecution.
- (v) The prosecution must send a true copy of the entire relevant record to the sanctioning authority including the FIR, disclosure statements, statements of witnesses, recovery memos, final investigation report and all other relevant materials. The record so sent should also contain the material/document, if any, which may tilt the balance in favour of the accused and on the basis of which, the competent authority may refuse sanction.
- (vi) The sanctioning authority has to do complete and conscious scrutiny of the whole record so produced by the prosecution independently applying its mind and taking into consideration all the relevant facts before grant of sanction while discharging its duty to give or withhold the sanction.
- (vii) The sanction order with respect to group 'A' & 'B' employees of the State Government and Public Sector Undertaking and Local Authority shall be issued under the seal and signature of the officer of the rank of Additional Secretary and above in the Home Department, Government of Sikkim, after obtaining approval from the competent authority.
- (viii) The sanction order with respect to group 'C' & 'D' employees of the State Government and Public Sector Undertaking and Local Authority shall be issued under the seal and signature of the officer not below the rank of Joint Secretary or equivalent of the Home department.
- (ix) If any confusion arises regarding the interpretation of this guidelines than the file should be referred to Home Department for final decision.

By order and in the name of Governor.

R. Telang, IAS
Principal Secretary to the Government of Sikkim,
Home Department,
File No.GoS/Home-II/2002/29